

① Supreme Court U.S.
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No. 05-831 NOV 18 2005

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IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Michael T. Sadlowski
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Jocelyn M. Sadlowski
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QUESTIONS PRESENTED

INTRODUCTION

This petition is an appeal of an order of the U.S. Court of Appeals for the First Circuit. The petitioners were seeking a panel appeal of single judge decisions. Petitioners were seeking the panel to overturn a single judge decision where Circuit Judge Lynch denied a new hearing/rehearing and denied recall of mandate.

Plaintiffs-appellants had filed the Petition for New Hearing due to an Opinion of the United States Supreme Court of Feb., 2004. The Opinion established many points which petitioners argue are cause to overturn the U.S. Court of Appeals ruling on the search warrant matter in Sadlowskis' case. The Opinion was on the case of *Groh v Ramirez*, 02-811, 540 series, Feb., 2004, and which affirmed the Opinion of the U.S. Court of Appeals for the Ninth Circuit, *Ramirez v Butte-Solver Bow County*, July 2002.

The order of the U.S. Court of Appeals for the First Circuit results in the order to be in conflict with points made in the Opinion of the U.S. Court of Appeals for Ninth Circuit and in conflict with points made in the Opinion of the U.S. Supreme Court.

QUESTIONS

- 1) Do the following key points made in the Opinion of the U.S. Supreme Court (decided February, 2004) and which affirmed the Opinion of the U.S. Court of Appeals for the Ninth Circuit (decided and amended July, 2002) cause the ruling of the U.S. Court of Appeals for the First Circuit regarding the search warrant matter to be overturned?

Key points:

- 1) A search warrant form must be seen by the court and issued by the court;
 - 2) During or prior to the completion of a search, and where an occupant is present, an issued and valid search warrant form or copy thereof is to be given to and left with the person whose premises is being searched;
 - 3) The law enforcement officer serving the search warrant bears responsibility that the search warrant given to the person whose premises is being searched is the issued search warrant form or copy thereof and that it is not facially defective in an obvious way;
 - 4) At the time of the search, a document or documents elsewhere do not save an invalid search warrant that was given to the person whose premises was searched;
 - 5) The existence of probable cause that may have been established in an affidavit for application for search warrant does not save an invalid search warrant given to the person whose premises is being searched.
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- 2) What time limit is there for petitioning a new hearing/rehearing after an Opinion of the U.S. Supreme Court is published in the printed U.S. Reports?
 - 3) For petitions to the U.S. Court of Appeals for the First Circuit, is it fair to the plaintiffs-appellants to deny petitions without specificity of points being stated that truly reveal the basis for denial versus only providing general statements for such denial?
 - 4) Does abuse of Rule 56 on Summary Judgment in a material way raise cause to overturn an order?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Plaintiffs-appellants were	Michael Sadlowski
	Jocelyn Sadlowski
	Suzanne Sadlowski

Defendant-appellee was:	Louis Benoit
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the order below.

OPINIONS BELOW

For cases from federal courts

The order denying Petition for Appeal of Single Judge Decisions appears at Appendix A.

The order of a single judge denying Petition for New Hearing appears at Appendix B.

The order of a single judge denying Petition for New Hearing *En Banc* appears at Appendix C.

The ruling by the U.S. Court of Appeals for the First Circuit in Sadlowskis' case, 02-1365 appears at Appendix D.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals for the First Circuit rendered the order on Petition for Appeal of Single Judge Decisions was August 23, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment [U.S. Constitution] – ‘The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’

Federal Rule of Civil Procedure, Rule 56 on Summary Judgment

STATEMENT OF THE CASE

On Friday afternoon, at around 2:40 P.M., on August 23, 1996, Leominster police detective Louis Benoit, led a search team and performed a search of the single family home of Michael and Jocelyn Sadlowski at 85 Harvard Street, Leominster, Massachusetts.

Detective Benoit gave a document labeled as search warrant to Jocelyn Sadlowski and to Suzanne Sadlowski to read. Detective Benoit did not leave the document or a copy at the residence. The search team ransacked the house. Michael Sadlowski returned home later in the day, around 5:00 P.M., from work and found the house a mess with chairs, sofas, beds apart or overturned, dressers with drawers removed and dumped on the floor, papers, kitchen utensils and contents of kitchen cabinets strewn over the floor, living room furniture turned over, personal effects (attaché case) of Michael Sadlowski searched and file cabinet of Michael and Jocelyn Sadlowski was opened and searched. As there was the K-9 dog to sniff for marijuana, there was no need to rummage and ransack the house. The canine dog would be able to locate whatever marijuana was present.

Michael Sadlowski viewed a search warrant several days later at the clerk's office of the Leominster District Court. After such viewing, Michael obtained a black and white copy and showed the document to Jocelyn. Jocelyn stated that the document given to her to read at the time of the search was not the search warrant form on file and not a copy of it.

In 1998, the Sadlowskis filed a civil action against Louis Benoit.

The core issue is that plaintiffs-appellants Sadlowskis state in their affidavits, depositions and testimony at the motion for

summary judgment hearing that the document labeled as search warrant that was served in hand at the Sadlowski residence on August 23, 1996 during the time of the search of the residence was not the search warrant document or copy thereof that is currently on file at the Leominster District Court. Per the affidavit of Jocelyn Sadlowski and depositions of Jocelyn Sadlowski and Suzanne Sadlowski, the search warrant served at the residence reveals a form quite different than the one on file with the court. Also, from the deposition of appellee Benoit, the exhibit of how he demonstrated he folded the search warrant reveals that the search warrant on file in the court is not the one that was served at the residence. The Sadlowskis had a private investigator examine the search warrant on file for the folds and which such action revealed the folds of the exhibit do not match the folds in the search warrant on file. Detective Benoit claims to have served in hand the original search warrant that is on file.

Hypothesis #1:

The search warrant currently on file had NOT issued prior to the search of Sadlowskis' residence so a fabricated document (different format, etc.) labeled as search warrant was used.

The fabricated search warrant was quite different than the search warrant form currently on file. There is no affidavit from the Assistant Clerk-Magistrate Raymond Salmon Jr. stating the time of day that the search warrant was signed. The court was extremely busy on Friday August 23rd, and Assistant Clerk-Magistrate Salmon was in court for arraignments. He would not have had time to conduct a review of an application for search warrant until the end of the day after the search was completed.

Hypothesis #2:

If a search warrant might have issued prior to the search, a fabricated search warrant (different format,

etc.) was used instead so as to conduct a general (warrantless) search.

For either situation, a violation of the Fourth Amendment results.

The situation for the Sadlowskis needs to be examined with the key points made as a result of the Opinion of the U.S. Supreme Court in the *Groh v Ramirez* case and the Opinion of the U.S. Court of appeals for the Ninth circuit in the *Ramirez v Butte-Silver Bow County* case.

Those key points are:

- 1) A search warrant form must be seen by the court and issued by the court;
- 2) During or prior to the completion of a search, and where an occupant is present, an issued and valid search warrant form or copy thereof is to be given to and left with the person whose premises is being searched;
- 3) The law enforcement officer serving the search warrant bears responsibility that the search warrant given to the person whose premises is being searched is the issued search warrant form or copy thereof and that it is not facially defective in an obvious way;
- 4) At the time of the search, a document or documents elsewhere do not save an invalid search warrant that was given to the person whose premises was searched;
- 5) The existence of probable cause that may have been established in an affidavit for application for search warrant does not save an invalid search warrant given to the person whose premises is being searched.

An excerpt from the Opinion in the *Ramirez v Butte-Silver Bow County* case: "... individuals must be able to read and

point to the language of a proper warrant.”

The U.S. Court of Appeals for the First Circuit rendered its decision on March 31, 2003. The appeal addressed two matters: collateral estoppel and threatening. The court chose not to address the collateral estoppel matter but chose to look at the case on other grounds.

It is most disturbing that the ruling in the Sadlowskis case includes statements on information taken out of context and distorted and stating facts where no factual evidence through affidavits existed. Deciding the case on other grounds without having an oral hearing, without all discovery being available because local rules do not allow them as part of the record, without the plaintiffs-appellants being able to provide an opposition to the specific matters of other grounds, renders Rule 56 as an unjust practice. The actions in the development of the ruling and the ruling reveal an abuse of Rule 56.

A Petition for Writ of Certiorari was filed by Michael Sadlowski in September of 2003. Due to the vagueness and ambiguity of the ruling of the U.S. Court of Appeals for the First Circuit, some general questions were raised in the petition. The petition was denied. However, Michael Sadlowski believes that some of the questions were answered in a case that was scheduled to be heard at around the same time by the U.S. Supreme Court. The case was *Groh v Ramirez*, 02-811.

When the Sadlowskis learned of a case regarding search warrants that had been before the United States Supreme Court and a case where the Supreme Court ruled on sentencing guidelines that led to the Cianci case being reheard for sentencing, the Sadlowskis filed a Petition for New Hearing in April, 2005. Normally, a petition for new/rehearing is reviewed by a panel. The Sadlowskis' felt that the U.S. Supreme Court Opinion in *Groh v Ramirez* was